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Minister of Indian Affairs  
and Northern Development



Ministre des Affaires  
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

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JUN 13 2001

Chief Donald Nookey  
Duncan's First Nation  
PO Box 148  
BROWVALE AB T0H 0L0

Dear Chief Nookey:

As you are aware, I am in receipt of the Indian Specific Claims Commission's (ISCC) September 1999 report regarding your First Nation's specific claim, *Duncan's First Nation Inquiry - Report on: 1928 Surrender Inquiry*. I appreciate the detailed consideration which the Commission brought to the issues.

Two of the Duncan's First Nation's claims related to the lands surrendered in 1928 have been settled. As a result of the ISCC inquiry, Canada agreed to negotiate the Duncan's First Nation's claim with respect to IR 151H, which led to a settlement in 1999. In 1996, Canada and the First Nation successfully settled the claim relating to the application of the *Farmers' Creditors Arrangement Act* to sales of surrendered reserve lands.

Although the ISCC concluded that Canada owes no lawful obligation to the Duncan's First Nation in relation to six of the seven reserve parcels at issue, the Commission recommended that Canada accept Duncan's claim with respect to one parcel, IR 151E (118 acres). The ISCC stated that Canada should have brought a 1923 leasing proposal in relation to IR 151E to the First Nation's attention and that:

...having failed to fulfil this duty, the Governor in Council should have withheld consent to the surrender of IR 151E since, without the Band having been afforded the opportunity to consider its options, the surrender must be considered to have been foolish, improvident, and exploitive.

After careful review, Canada has declined to accept the Commission's recommendation to negotiate with the Duncan's First Nation regarding IR 151E, for the reasons outlined below.

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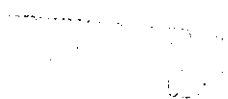
First, the leasing proposal was submitted by Mr. Early five years before the actual surrender, and there is no evidence that a lease of IR 151E was still being sought in 1928. In addition, the evidence indicates that the First Nation knew of the 1923 leasing proposal and could have raised the issue on its own behalf. The Crown cannot substitute its own decision for that of the First Nation, and the Commission found that the assent to the surrender was given freely, and that Canada invited the First Nation to raise issues. The ISCC accepted that Canada posed the question at the surrender meeting: "What do you want to do?" In Canada's view, nothing prevented the First Nation from raising the leasing issue at the time.

Finally, the Commission did not examine the terms of the proposed lease and, as a result, made no finding that the 1923 lease proposal was either more or less advantageous to the First Nation than a surrender. Without this information, Canada is not able to accept the Commission's conclusion that it was exploitative to allow for the surrender and sale to go forward.

For these reasons, Canada cannot accept this claim for negotiation as recommended by the ISCC.

I thank you for your patience in waiting for Canada's response, and I regret that my reply could not be more positive with respect to IR 151E. However, I am very pleased that the inquiry led to the acceptance for negotiation, and subsequent 1999 settlement, of the Duncan's First Nation's claim regarding IR 151H.

Yours sincerely,



Robert D. Nault, P.C., M.P.

c.c.: Mr. Roger J. Augustine  
Mr. Daniel J. Bellegarde  
Mr. James Prentice, Q.C.